Editor's note: Reconsideration denied by Order dated May 23, 2002

ANDERSON OIL CO.

IBLA 99-356 Decided February 6, 2002

Appeal from that part of a decision by the Acting Deputy State Director, New Mexico State Office, Bureau of Land Management, affirming assessments for incidents of noncompliance, issued by the Tulsa Field Office, Bureau of Land Management. SDR 99-01.

Affirmed.

1. Bureau of Land Management--Oil and Gas Leases: Civil Assessments and Penalties

When an oil and gas operator fails to comply with a BLM direction to produce or plug a well by a date certain, BLM may issue an incident of noncompliance for such failure and levy an assessment in accordance with 43 CFR 3163.1(a)(2).

APPEARANCES: R. M. Helton, Esq., Wichita Falls, Texas, for appellant; Grant L. Vaughn, Esq., Office of the Field Solicitor, Southwest Region, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Anderson Oil Co. (Anderson) has appealed from a June 17, 1999, decision of the Acting Deputy State Director, New Mexico State Office, Bureau of Land Management (BLM), affirming in part and reversing in part nine incidents of noncompliance (INC's) issued in September 1998 by the Tulsa Field Office (TFO), BLM, each assessing $250 for failure to comply with previous INC's.

The record shows that on February 24, 1998, TFO issued INC's Nos. 00001 through 00009 to Anderson, as operator of certain wells on Federal or Indian oil and gas leases. Each INC related to a separate Federal or Indian oil and gas lease required that one or more wells be produced or plugged. 1/ None of those INC's contained a date by which Anderson was to comply.

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1/ The 23 wells required by BLM to be produced or plugged on the seven Federal leases and two Indian leases were W1-9 on lease OKG014144A; 3, 2, and 56 on lease OKG014008; 1, 2, and 3 on lease OKG014007; 19E and 4 on

On April 29, 1998, TFO issued INC Nos. 00014 through 00022 to Anderson charging it with "[f]ailure to comply with a notice, written order or instruction of the authorized officer." Specifically, the INC's cited failure to comply with the February 24, 1998, INC's and in each case iterated the requirement that the well or wells in question be produced or plugged, establishing May 28, 1998, as the date for compliance. 2/

When Anderson failed to comply with the April 29, 1998, INC's, TFO issued INC Nos. 00027 through 00035 on September 23, 1998, for failure to produce or plug the identified wells on the leases. 3/ Each September 1998 INC cited 43 CFR 3163.1(a) as the regulation being violated.

On October 25, 1998, Anderson filed a request for State Director Review (SDR) of the September 1998 INC's. On January 13, 1999, Anderson made an oral presentation to BLM which was followed by written submissions. Notes of the oral presentation are contained in the case file.

Anderson argued on SDR that, with respect to 6 of the 9 leases, the wells were no longer located on Federal lands because of movement of the Red River, which in the area of the leases forms the boundary between the states of Texas and Oklahoma. 4/ Anderson argued that the south bank of the river had moved northward thereby placing the wells in the State of Texas and no longer on Federal land. 5/ Anderson contended, as a result, BLM no longer had jurisdiction to make assessments on the wells because they were not located on Federal lands or mineral estate. Anderson also presented survey evidence which was evaluated by BLM's cadastral survey team.

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fn. 1 (continued)
lease OKG014850; 4, 3, and 206 on lease OKG014186; 175, 174A, 2, and 173A
on lease OKG014091; Capshaw 11 on lease OKBLM028782; Toquothty C-1, Toquothty 3, and Toquothty 2 on Indian lease 142020621882; and Ray Doyah 3, Ray Doyah 2, and Ray Doyah 1 on Indian lease 151IND49124.

2/ All the INC's required compliance by May 28, 1998, except INC No. 00014 for lease OKG014144A. It listed the date of compliance as May 29, 1998.

3/ Each INC stated that it was "your third (3rd) notice that you have failed to comply with a notice, written order or instruction by the authorized officer * * *." Those INC's, however, were not the third notice of failure to comply, but the second.

4/ The three leases for which Anderson did not make the argument are the two Indian leases and OKBLM028782.

5/ The boundary between the States of Oklahoma and Texas, where it follows the course of the Red River was established in litigation between those states. See Oklahoma v. Texas, 256 U.S. 70 (1921), Oklahoma v. Texas, 261 U.S. 340, 341 (1922), and Oklahoma v. Texas, 265 U.S. 490, 493, 500 (1924). In Oklahoma v. Texas, 261 U.S. at 341, the Court stated that the boundary was "on and along the south bank of that river as it existed in 1821, when the treaty [of 1819] became effective," with certain exceptions related to erosion, accretion, and avulsion.

In the SDR decision, BLM addressed Anderson's boundary arguments. It stated that 5 of the 6 leases 6/ cited by Anderson contain a boundary clause stemming from the litigation between Oklahoma and Texas regarding the boundary between the two states. The boundary clause, as recited in the decision, is as follows:

> (b) Boundary lines. - Because of possible changes in the Texas-Oklahoma boundary line and medial line of the Red River, as established by the Supreme Court of the United States on June 9, 1924 (265 U.S. 500), in the case either or both of said boundary lines affect the lands leased hereunder, it is understood that the area of the lease may be diminished by reason of a shift to the northward of the Texas-Oklahoma line, due to erosion or accretion, and that in case of such a shift southward, the area of this lease will not be enlarged; and as to any change in the medial line of the Red River, it is expressly agreed:
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> (1) That this lease will not be enlarged by shift of the medial line northward; and
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> (2) That in the event of a shift of said line southward so that any or all of the area included in this lease shall be north of that line and title thereto vest in Indian allottees, riparian owners of the north side of the Red River, this lease and all rights thereunder as to the area thus passing from ownership of lessor shall thereupon terminate, Provided, that if lessee shall have drilled a producing well or is then engaged in drilling a well on the land title to which so passes from ownership of the United States, lessee agrees to accept a new lease as to such well and the land upon such terms as are regularly required of other lessees of the half of the river bed.

Thus, under the boundary clause the lease would not be enlarged by a northward shift of the medial line, and a southward shift (resulting in any or all of the area of the lease being north of that line) would result in title vesting in Indian allottees, who were the riparian owners of the north side of the Red River. In the SDR, BLM stated:

> The plat (Exhibit 11) submitted by Anderson was the first notice filed with BLM that alleges movement of the banks and medial line of the Red River. [7/] The Cadastral Survey/ Geographic Sciences Team of the New Mexico State Office has reviewed the evidence presented by Anderson. It is their opinion that the survey submitted by Anderson (Exhibit 11)

6/ The case file for the other lease, OKG014850, had been transferred to the Federal records center, but BLM believed that it "would also contain such a clause." (Decision at 2.)

7/ Anderson's Exhibit 11 is a survey and plat map of the north bank, medial line, and interstate boundary bank of the Red River in the area of the leases.

> is an inaccurate depiction of the traces of the north bank and the medial line of the Red River in the vicinity of the leases in question. The north bank is inaccurate because Anderson's surveyor used the gradient boundary method which was to be used for the south bank. The north bank has always been located by the usual method prescribed by the United States General Land Office. The north line should be located at the ordinary high water mark. This mistake would place the north bank somewhat further north than shown in Anderson's survey. This would affect most of the federal leases involved in this appeal. The medial line is simply a line midway between the north and south banks and must be in error if the north bank is incorrect. The net effect of these errors is to negate some of Anderson's survey argument. Southward movements of the Red River do not effect either of the two Indian leases because they still lie in Oklahoma and are not impacted by Oklahoma v. Texas.

(Decision at 3.)

In the SDR, BLM examined Anderson's lease-specific arguments and made findings regarding the wells questioned by Anderson. The SDR decision upheld the assessments in each case, except for lease OKG014008 for which it reversed the assessment, based on the following finding:

> The only remaining issue is well 3 on lease OKG014008. Anderson's placement of the south bank of the Red River seems to be accurate in the vicinity of lease OKG014008. This means that lease OKG014008 has shrunk somewhat and well 3 no longer lies within the boundary of the original lease description. The well lies in Texas and no longer lies on mineral estate or a lease for which the United States has jurisdiction. [8/]

(Decision at 6.)

In affirming the assessments, BLM's conclusions were based on its findings that wells either remained within the confines of the original leases or that river movement had placed wells on unleased Indian allottee lands.

On appeal, Anderson does not allege any specific error in any of BLM's findings regarding the individual wells. Instead, it raises several

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8/ BLM's assessments in this case were levied by INC on a per lease basis, not a per well basis. Thus, regardless of the number of wells per lease that BLM determined should be produced or plugged, it issued one INC per lease assessing $250. As long as at least one of the wells required by BLM to be produced or plugged on a subject lease remained within BLM's jurisdiction, there was a basis for assessment. Nevertheless, it appears that BLM reversed the assessment for OKG014008 because one of the wells (well 3) no longer was within BLM's jurisdiction.

general issues. First, it complains that, by requiring plugging of the wells, BLM "has ordered appellant to trespass upon the land rights of private parties who * * * now own land previously owned by the U.S.A. or Indians." (Notice of Appeal at 2.)

BLM asserts in its answer that BLM has jurisdiction to assess Anderson for the unplugged wells regardless of whether they are presently within the boundaries of the leases. It points to 43 CFR 3162.3-4(a), which requires the operator to "promptly plug and abandon * * * each * * * well in which oil or gas is not encountered in paying quantities or which * * * is * * * no longer capable of producing oil or gas in paying quantities * * *." In addition, the diligence clause of Federal and Indian oil and gas leases, BLM argues, requires wells to be plugged securely before abandonment. BLM asserts that "[t]here is no limitation on enforcing these provisions if the lease boundaries change." (Answer at 2.)

[1] In this case, Anderson was directed to produce or plug the wells in question by a date certain. When it failed to do so, BLM issued the INC's at issue under the authority of 43 CFR 3163.1(a)(2), which states that "[w]here noncompliance involves a minor violation, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of $250 for failure to abate the violation or correct the default within the time allowed." 9/

According to the SDR decision, all the wells except one (well 3 associated with OKG014008) are located on the leases in question or on unleased Indian allottee lands. BLM asserts, and Anderson does not show otherwise, that it has authority for well operations on Indian lands. Anderson has failed to show that compliance with BLM's orders to produce or plug would require it to trespass on private lands. Moreover, in Glen Morgan, 122 IBLA 36, 44 (1992), the Board affirmed a BLM decision requiring inspection and rehabilitation of an oil and gas wellsite and access road, even after expiration of the oil and gas lease. The Board stated:

> In addition, while the applicable Departmental regulation in effect at the time of abandonment of the subject well, 43 CFR 3162.3-4 (1983), expressly required that each newly-completed well in which oil or gas was not encountered in paying quantities be plugged and abandoned "in accordance with a plan first approved in writing * * * by the authorized officer," there is no indication that the obligation to properly plug and abandon a well drilled during the lease term terminated upon expiration of the lease. Furthermore, the specific requirements for reclamation, as set forth in the APD and

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9/ In its answer, BLM cites 43 CFR 3163.2(a). That regulation, however, relates to the issuance of civil penalties. In the present case, BLM has issued assessments, not civil penalties. The regulations at 43 CFR 3163.1(d) provide that, if there is continued noncompliance following the issuance of an assessment, the operating rights owner or operator will be subject to civil penalties under 43 CFR 3163.2.

stipulations incorporated therein, are, as we stated in Fuel Resources Development Co., 84 IBLA 17, 23 (1984), "contractual in nature" and, thus, would survive expiration of the underlying lease. Accordingly, we hold that BLM properly required appellant, who had acquired a leasehold interest on September 1, 1983, to restore the surface of the leased land even after the lease's expiration on October 31, 1984. See Gerald Dee Foster, 115 IBLA 233 (1990) (prospecting permit); E. B. Brooks, Jr., 92 IBLA 282 (1986) (lease).

Anderson next asserts a denial of due process. It contends that, although a hearing was held on SDR in Moore, Oklahoma, there is no official record of that hearing. It also contends that according to the decision on SDR a further hearing was held in Santa Fe, New Mexico. "Without any notice or opportunity to be present at this hearing[,] evidence that the appellant has never seen, was introduced and based upon that evidence the nine $250.00 sanctions are still in force and effect." (Notice of Appeal at 2.)

Contrary to Anderson's contention, the case record does contain a "record" of the oral presentation made by Anderson in Moore, Oklahoma. Although there is no transcript of that proceeding, there is a January 22, 1999, four-page memorandum from BLM Geologist Richard E. Wymer, the presiding official, to the BLM New Mexico State Director summarizing the substance of that presentation and enclosing listed exhibits and attachments. While there is no evidence that the memorandum was served on Anderson, it is part of the official record in the case available to Anderson.

There is no evidence of any further "hearing" in this matter. Perhaps Anderson is referring to the fact that the SDR decision references official agency records (lease, well, and production records, as well as maps and photographs) relied on by BLM in making its determination on SDR. All those official agency records were available and continue to be available to Anderson.

We find no deprivation of due process. When a person alleges an impairment of property rights, due process requires notice and an opportunity to be heard before the alleged impairment becomes final. In this case those rights were afforded Anderson, who made an oral presentation of its case to BLM. The Acting Deputy State Director considered Anderson's evidence and arguments and issued a decision appealable to this Board. Appeal to the Board of Land Appeals satisfies the due process requirements. Davis Exploration, 112 IBLA 254, 260 (1989), aff'd, No. 90-0071 (D. Wyo. April 29, 1991), aff'd, 961 F.2d 219 (10th Cir. 1992); Santa Fe Pacific Railroad Co., 90 IBLA 200, 220 (1986).

Anderson makes several other arguments concerning the results of the Oklahoma v. Texas litigation. We have reviewed those arguments and conclude that they are not relevant to this proceeding and clearly do not establish any error in the decision under appeal. For that reason, they are rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

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David L. Hughes
Administrative Judge